

REMARKS

As a preliminary matter, Applicants respectfully note that the present Office Action dated February 25, 2005 has erroneously been designated as final (see Office Action Summary item 2a). The present application is a continuing application in that a Request for Continued Application was filed in connection with this application on January 14, 2005. Prior to entry of the instant amendment, the present application contains claims that were presented in the earlier application after final rejection but were denied entry because they were deemed to raise new issues and would require further consideration and/or search (see Advisory Action dated September 16, 2004). According to the MPEP, in such a situation it is improper for the claims of a new application to be finally rejected (see MPEP §706.07(b)). It is further noted that the Office Action does not constitute a substantive action on the merits, but merely asks Applicants to make an election of species.

Attorneys for Applicants thank the Examiner for the telephone conference on May 25, 2005 during which the Examiner indicated that the designation of the present Office Action as a final Office Action is a typographical error and that the Office Action will be converted into a non-final status.

Prior to entry of this amendment, claims 1-3 and 6-37 were pending. In the present Amendment, claims 1-3, and 6-37 have been canceled without prejudice to Applicants' rights to pursue subject matter of the cancelled claims in the subsequent applications, and new claims 38-74 have been added. Support for the new claims can be found, *inter alia*, in the specification as filed, as follows. Support for the amendment to claim 38-43 is at page 7, lines 9-10 ("treating", "preventing"), at page 5, lines 11-12 ("colorectal cancer", "pre-malignant colorectal adenoma"), at page 7, line 15 ("human"), and at page 1, lines 27-28 (theaflavin-3-gallate and theaflavin-3'-gallate). Support for new claims 44-45 and 48-49 is at page 7, lines 33-34 ("food . . . oral composition"). Support for new claims 46-47 and 50-51 is at page 7, lines 27-29 ("nutraceutical", "physiologically acceptable carrier"). Support for new claims 52-57 is at page 9, line 14 ("dietary supplement"). Support for new claims 58-63 is at page 9, line 30 ("extract of black tea"). Support for new claims 64-65 is at page 8, lines 4 and 24 ("capsule, tablet", "lozenge, coated tablet"). Support for claims 66-67 is at page 8, line 13 ("solution, syrup or suspension"). Support for new claim 68 is at page 8, line 22 ("controlled time release formulation"). Support for claims 69-70 is at page 9, lines 10-13 ("suppository . . . rectal administration"). Support for claims 71-72 is at page 9, lines 22-27 ("resveratrol, . . . Huzhang extract"). Support for claim 73 is at page 5, line 24 ("50 µM and

100 μ M"). Support for claim 74 is at page 9, line 15 ("up to 5% by weight"). Applicants believe that no new matter has been added by these amendments and additions to the claims. Accordingly, claims 38-74 will be pending upon entry of this Amendment.

In the Office Action dated February 25, 2005, the Examiner required to elect a single disclosed species for prosecution on the merits under 35 U.S.C. § 121. Specifically, the Examiner required Applicants to elect one of the following disease conditions: cancer, inflammation, and arthritis.

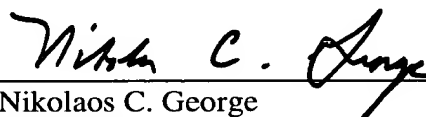
In response, Applicants hereby elect, with traverse, the species of the claimed invention of cancer. In particular, the pending new claims 38-74, drawn to methods that administer compositions comprising theaflavin-3-gallate and theaflavin-3'-gallate to human with or at risk for developing colorectal cancer.

Attorneys for Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Applicants respectfully request that the present amendments and remarks be entered and made of record in the instant application. An early allowance of the application is earnestly requested. If any issues remain in connection herewith, the Examiner is respectfully invited to telephone the undersigned to discuss the same.

Respectfully submitted,

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Enclosures